

**IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

SHERMAN DIVISION

DATE: 5/25/2022

DISTRICT JUDGE
Amos L. Mazzant, III

COURT REPORTER: Chris Bickham
COURTROOM DEPUTY: Keary Conrad

Gibson Brands, Inc., a Delaware corporation	4:19CV358
v.	
Armadillo Distribution Enterprises, Inc., Concordia Investment Partners, LLC	
Does 1 through 10	

ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFENDANT
Stephen Dale Howen, Andrea Bates, Kurt Schuettinger, Keith Slyter, Paralegal: Amanda Slyter	Vic Henry, Anna B. Naydonov, Douglas Rettew, Elyse McNamara, Patrick Rodgers and Emileigh Hubbard

On this day, came the parties by their attorneys and the following proceedings were held in Sherman, TX:

TIME:	MINUTES: Jury Trial - Day 8
8:20 a.m.	Court in session. Court notes appearances.
8:20 a.m.	Plaintiff's counsel, Stephen Howen calls Evan Rubenson to begin offer of proof. Witness, Evan Rubenson is reminded he is still under oath. Counsel begins questioning.
8:26 a.m.	Pass the witness. Defendant notes that the Defendant's offer of proof was filed.
8:26 a.m.	Defendant's counsel, Doug Rettew moves for directed verdict.
8:30:50 a.m.	Motion is denied.
8:31:42 a.m.	[RECORD SEALED] Defendant's counsel, Anna Naydonov continues direct examination of Todd Schoettelkotte.
8:34:22 a.m.	Defendant's counsel, Anna Naydonov offers Defendant's Exhibit 3976. No objection. Defendant Exhibit 3976 is admitted.
8:40:45 a.m.	Pass the witness. Plaintiff's counsel, Stephen Howen cross examination of witness, Todd Schoettelkotte.
8:42:52 a.m.	Plaintiff's counsel, Stephen Howen refers witness to Defendant Exhibit 3858 and 3945.
8:53:38 a.m.	Pass the witness. Defendant's counsel, Anna Naydonov begins re-direct examination of witness, Todd Schoettelkotte.

9:01:14 a.m.	Pass the witness. Plaintiff's counsel, Stephen Howen begins re-cross examination of witness, Todd Schoettelkotte.
9:02:37 a.m.	Pass the witness. Court polls the jury for questions of the witness. Bench conference.
9:04:15 a.m.	Court asks questions from the jury of the witness.
9:11:07 a.m.	Witness excused.
9:11:08 a.m.	[RECORD UNSEALED]
9:11:12 a.m.	Defendant's counsel, Doug Rettew calls by video deposition, Paul Jernigan and notes the allotted time for each side is 9:54 for Plaintiff and 23:01 for Defendant.
9:12:12 a.m.	Video deposition of Paul Jernigan begins.
9:45:15 a.m.	Video deposition concludes.
9:45:36 a.m.	Defendant's counsel, Doug Rettew calls Dr. Michael Barone. Witness placed under oath. Defendant's counsel, Doug Rettew begins direct examination of Dr. Michael Barone.
9:49:18 a.m.	Defendant's counsel, Doug Rettew offers Dr. Michael Barone as an expert.
9:49:20 a.m.	Plaintiff's counsel, Kurt Schuettinger begins voir dire. Plaintiff's counsel objects to Dr. Barone being offered as an expert. Court hears response from Defendant's counsel, Doug Rettew.
9:51:17 a.m.	Court overruled objection and will accept Dr. Barone as an expert.
10:04:25 a.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1454. No objection. Defendant Exhibit 1454 is admitted.
10:09:20 a.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 326. No objection. Defendant Exhibit 326 is admitted.
10:11:25 a.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1459. No objection. Defendant Exhibit 1459 is admitted.
10:13:18 a.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1460. No objection. Defendant Exhibit 1460 is admitted.
10:32:04 a.m.	Court re-convened. Jury seated.
10:32:40 a.m.	Plaintiff's counsel, Kurt Schuettinger begins cross examination of Dr. Michael Barone.
10:41:22 a.m.	Plaintiff's counsel, Kurt Schuettinger refers witness, Dr. Michael Barone to Defendant Exhibit 1454.

10:55:28 a.m.	Pass the witness. Defendant's counsel, Doug Rettew begins re-direct examination of Dr. Michael Barone.
11:01:37 a.m.	Pass the witness. Plaintiff's counsel, Kurt Schuettinger begins re-cross examination of Dr. Michael Barone.
11:02:39 a.m.	Pass the witness. Defendant's counsel, Doug Rettew begins re-direct examination of Dr. Michael Barone.
11:03:18 a.m.	Pass the witness. Court polls the jury for questions of the witness. Bench conference.
11:04:44 a.m.	Witness excused.
11:04:54 a.m.	Defendant's counsel, Doug Rettew calls by video deposition Mark Agnesi and notes the allotted time for each side is 13:26 for Plaintiff and 1:02:50 for Defendant.
12:00:01 p.m.	Jury excused for lunch.
12:00:44 p.m.	Court questions Plaintiff regarding jury instructions.
12:03 p.m.	Court recess for lunch.
1:04:03 p.m.	Court re-convened. Court hears from Plaintiff's counsel, Stephen Howen regarding charts and underlying documents and as to whether they will all go to the jury. The Court advises that the Court conditionally admits the exhibits at the beginning of trial and the exhibits have to be used in front of the jury but the Court does not require them to show every single document so the fact that it was utilized or a compilation of the exhibit is utilized it becomes admitted.
1:06:01 p.m.	Court hears argument from the Parties regarding the Court's charge and incontestability, generic-ness and acquired distinctiveness. Court hears from Plaintiff's counsel, Stephen Howen and Andrea Bates and Defendant's counsel, Anna Naydonov.
1:13:34 p.m.	Jury seated.
1:14:20 p.m.	Defendant continues video deposition of Mark Agnesi.
1:36:49 p.m.	Video concludes. Defendant's counsel, Doug Rettew offers Defendant Exhibits 14, 15, 16, 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 49, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53. Plaintiff objects on hearsay. Defendant Exhibits 14, 15, 16, 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 49, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 are admitted.
1:36:49 p.m.	Defendant's counsel, Doug Rettew calls Hal Poret. Witness placed under oath. Defendant's counsel begins direct examination of Hal Poret.

1:41:00 p.m.	Defendant's counsel, Doug Rettew offers Hal Poret as an expert on survey research and design. No objection. Court will treat Hal Poret as an expert.
1:43:09 p.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1442. No objection. Defendant Exhibit 1442 is admitted. Counsel offers Defendant Exhibit 1443.
1:44:04 p.m.	Objection hearsay. Bench conference regarding Plaintiff objection.
1:45:28 p.m.	Defendant's counsel, Doug Rettew continues direct examination of witness, Hal Poret.
2:04:09 p.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1461. No objection. Defendant Exhibit 1461 is admitted.
2:07:26 p.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1466. No objection. Defendant Exhibit 1466 is admitted.
2:08:15 p.m.	Defendant's counsel, Doug Rettew offers Defendant Exhibit 1443. No objection. Defendant Exhibit 1443 is admitted.
2:10:45 p.m.	Pass the witness. Plaintiff's counsel, Kurt Schuettinger begins cross examination of witness, Hal Poret.
2:25:42 p.m.	Pass the witness. Defendant's counsel, Doug Rettew begins re-direct examination of witness, Hal Poret.
2:30:27 p.m.	Pass the witness. Plaintiff's counsel, Kurt Schuettinger begins re-cross examination of witness, Hal Poret.
2:31:53 p.m.	Pass the witness. Defendant's counsel, Doug Rettew begins re-direct examination of witness, Hal Poret.
2:32:16 p.m.	Pass the witness. Court polls the jury for questions for the witness. Bench conference.
2:33:39 p.m.	Court asks questions from the jury.
2:35:32 p.m.	Witness excused.
2:36:31 p.m.	Defendant's counsel, Doug Rettew calls by videotape deposition Chris Hussong and notes that the video is 11 minutes.
2:48:35 p.m.	Defendant's counsel, Doug Rettew notes the breakdown of the Hussong video is 8 minutes 27 seconds for Defendant and 3 minutes 37 for Plaintiff.
2:48:53 p.m.	Defense rests.
2:49:12 pm	Plaintiff's counsel, Kurt Schuettinger calls Dr. Eugene Ericksen by video and notes it is 7 minutes 47 seconds.
2:57:33 p.m.	Video concludes.

2:57:10 p.m.	Plaintiff's counsel, Kurt Schuettinger plays rebuttal video of Dr. Eugene Ericksen by video and notes it is 9 minutes 28 and 1 minute 28 seconds for the Defendant.
2:58:16 p.m.	Plaintiff begins video.
3:07:35 p.m.	Plaintiff video concludes.
3:07:50 p.m.	Jury excused.
3:08:43 p.m.	Court recess for 15 minutes.
3:24:47 p.m.	Court re-convened. Jury seated.
3:25:32 p.m.	Defendant's counsel, Doug Rettew plays cross designations of the video of Dr. Eugene Ericksen noting the video is 50 minutes.
4:20:26 p.m.	Video concludes.
4:21:10 p.m.	Plaintiff's counsel, Stephen Howen re-calls Jim DeCola. Witness placed under oath. Plaintiff's counsel, Stephen Howen begins direct examination of Jim DeCola.
4:39:54 p.m.	Pass the witness. Defendant's counsel, Doug Rettew begins cross examination of Jim DeCola.
4:51:48 p.m.	Pass the witness. Stephen Howen begins re-direct examination of Jim DeCola.
4:52:30 p.m.	Pass the witness. Defendant's counsel, Doug Rettew begins re-cross examination of Jim DeCola.
4:52:50 p.m.	Pass the witness. Court polls the jury for questions for the witness. Bench conference.
4:54:04 p.m.	Court asks question from the jury.
4:54:44 p.m.	Defendant's counsel, Doug Rettew follow up questions from jury.
4:55:25 p.m.	Plaintiff's offer Plaintiff Exhibits 594, 595, 596, 597, 598, 599. Printed sales data that correspond to Defendant's 3858-3863. No objection. Plaintiff Exhibits 594, 595, 596, 597, 598, 599 are admitted. Plaintiff offers printed versions of Defendant 3494 and 3495 (with handwriting redacted). No objection. Defendant Exhibits 3494 and 3495 are admitted.
4:57:15 p.m.	Plaintiff's counsel, Stephen Howen request the Court take judicial notice of Dft 3886-3892 notice of incontestability affidavits. Court finds that no judicial notice needs to be taken.
4:57:41 p.m.	Plaintiffs close. Defendants close.
4:58:59 p.m.	Court will meet with attorney in chambers for charge conference. Objections to the charge will be made prior to 8:30 a.m. Parties agree to 90 minutes for closing argument. Plaintiff is advised to use ½ the time in the beginning and the rest may be reserved for rebuttal.

CASE NO. 4:19CV358 DATE: 5/25/2022

PAGE 6 - PROCEEDINGS CONTINUED:

	Plaintiff left: 2:01 Defendant left 2:48
	Plaintiff Exhibits Entered: 594, 595, 596, 597, 598, 599 Defendant Exhibits Entered: 14, 15, 16, 17, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 326, 360, 361, 362, 1442, 1443, 1454, 1459, 1460, 1461, 1466, 3494, 3495, 3858, 3945, 3976

DAVID O'TOOLE, CLERK

BY: Keary Conrad
Courtroom Deputy Clerk